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2001-2002
Annual Report

**New Brunswick
Human Rights
Commission**

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Human Rights Commission**

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Fredericton, N.B.
The Honourable Marilyn Trenholme Counsell
Lieutenant Governor
Province of New Brunswick

Your Honour:

I have the honour to submit to you the Annual Report of the New Brunswick Human Rights Commission for the fiscal year ending March 31, 2002. The Commission is responsible to the Minister of Training and Employment Development, Province of New Brunswick.

I am, your Honour, your obedient servant,

Norman McFarlane
Minister of Training and Employment Development
Minister Responsible for the Human Rights
Commission

Norman McFarlane
Minister of Training and Employment Development
Minister Responsible for the Human Rights
Commission
Province of New Brunswick

Dear Minister:

It is with a combined sense of pleasure and pride that I submit to you the Annual Report of the New Brunswick Human Rights Commission, for the fiscal year ending March 31, 2002, for onward submission to Her Majesty's Representative, the Lieutenant-Governor of New Brunswick.

Yours very truly,

Patrick Malcolmson
Chairman

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Building for the Twenty-First Century

The Vision, Mission and Aims of the New Brunswick Human Rights Commission

Vision

To be a leader in the promotion and protection of human rights.

Mission

The New Brunswick Human Rights Commission was created in 1967 to administer the *Human Rights Act*. The Commission promotes the principles of equality, seeks to eliminate discriminatory practices and contributes to more equitable, productive and inclusive environments in which to work, learn and live, by enforcing the *Act* and educating about human rights and responsibilities.

Aims

The Commission will continue to serve the people of New Brunswick into the twenty-first century by:

- exercising leadership and vision on human rights issues of national and provincial importance;
- promoting a greater understanding of the *Human Rights Act*;
- providing for the effective, efficient and speedy disposition of individual complaints of discrimination;
- initiating partnerships with government departments, private sector institutions, community and volunteer organisations and the media to promote a human rights culture that will eradicate prejudice and discrimination;
- enhancing its proactive role in human rights education to foster environments of inclusion, fairness, equality and dignity for all New Brunswickers;
- utilising advanced information technologies, multimedia as well as print publications and speakers to project our mission and mandate to the widest public audience;
- continuing as a recognised resource for the private and public sectors, including educational and community institutions, that seek to create internal human rights policies and procedures;
- being responsive to the human resource development needs of Commission members and staff;
- contributing in a positive and constructive manner to the process of province building and nation building.

Profiles of the Members of the Commission

(as of March 31, 2002)

Dr. Patrick N. Malcolmson Chair

Patrick Malcolmson received his B.Ed. and MA from the University of Alberta. He pursued doctoral studies at the University of Toronto, where he was awarded an Ontario Graduate Scholarship, as well as a Social Sciences and Humanities Research Council of Canada Doctoral Fellowship. He obtained his PhD in Political Science in 1992.

Dr. Malcolmson worked in the Legislative Research Service of the Ontario legislature from 1985 to 1987, and taught Political Science at the University of Alberta from 1987 to 1990. He then joined the Faculty of St. Thomas University in Fredericton, where he is Associate Professor and Chair of the Department of Political Science. He has also served as Assistant Vice-President (Academic) and Director of the Human Rights Programme. He is currently a member of the St. Thomas University Board of Governors.

Dr. Malcolmson is the author of scholarly articles and reviews on Canadian politics, legal and political theory, natural law and rights. He and Dr. Richard Myers are co-authors of the book *The Canadian Regime*. Dr. Malcolmson was appointed as the Chair of the New Brunswick Human Rights Commission in 2000.

André LeBlanc

André LeBlanc attended the Collège St. Joseph in Memramcook, N.B., the precursor of the Université de Moncton. He obtained a Certificate in Public Administration from the Université de Moncton. He has also undertaken professional development studies in Public Relations and Marketing at other teaching institutions, including the University of New Brunswick.

Mr. LeBlanc was employed in various capacities in the fisheries industry prior to commencing a lengthy and distinguished career with the New Brunswick Power Commission beginning in 1950. He occupied various positions throughout his career in the Customer Service Division, including supervisory positions. He played an instrumental role in the expansion of NB Power to the communities of Moncton and Grand Falls. He retired from NB Power in 1988.

Mr. LeBlanc has occupied a variety of positions on boards and associations, including being a Director of the Caisse Populaire and the Co-op in Cap-Pelé. He has also been actively involved in his community as a Director of the Beauséjour Curling Club and the Club d'âge d'or du Christ-Roi, both located in Moncton. He is also involved with the development of the Moncton Regional Council of the Federation of New Brunswick Senior Citizens.

He was first appointed to the Human Rights Commission in 1999 and was re-appointed in 2002.

David Peters CCdC

After a career that spanned the fields of education, hospitality and food service, David Peters retired in 2002 as supervisor of food services for the Saint John Regional Correctional Center. Mr. Peters has an international chef's degree, a teacher's license, as well as several other certificates. He is also a certified life skills coach.

Mr. Peters is an active member of the Black community of Saint John. He co-founded PROBE (Provincial Resources of Black Energies), PRUDE (Pride of Race, Unity, Dignity through Education), MALK (Maritime Association of Life Skills Coaches) and the New Brunswick Chef's Association. He is a member of PRUDE and a former member of the National Association of Black Educators, the New Brunswick Minister's Advisory Committee on Immigration and Multiculturalism and several other groups. Mr. Peters, as Chef and proprietor of "Iron Duke Dining Rooms," was recommended in *Where To Eat In Canada* in 1978, one year after it opened.

Mr. Peters has delivered several lectures on Black history to school and university students, service clubs and civil servants, and was the host of a local television series on Black history and issues. He was recently included in the inaugural publication of *Who's Who in Black Canada* (national compiling started in June 2001). He was appointed to the Human Rights Commission in 2001.

Gordon Porter

Gordon Porter holds a B.A., a B.Ed. and an honorary Doctor of Civil Laws degree from the University of New Brunswick, as well as a M.Ed. and C.A.S. from the University of Maine. He pursued doctoral studies in special education administration at Syracuse University in New York.

Dr. Porter is an Assistant Professor of Education at the University of Maine at Presque Isle, where he teaches courses on inclusive education practices for students with special needs including those with disabilities. He is an internationally known expert who has consulted, lectured and conducted training on inclusive education in numerous countries around the world. He was Director of Student Services for the schools in the Woodstock area from 1978 to 1999, after serving as a teacher and principal in several New Brunswick schools.

Dr. Porter was the founding Chairman of the Woodstock Community Residential Living Board and is a former president of the Canadian Association for Community Living at the local, provincial and national levels. He was the Chairman of the 1984 New Brunswick Department of Social Services task force which drafted the report *Employment, Meaningful Work and Participation: Towards a Quality Future for Mentally Retarded Adults*. He is the President of Inclusion InterAmericana, a regional federation of 20 national associations for individuals with disabilities and their families.

Dr. Porter was a Visiting Fellow at the New Zealand Institute in Mental Retardation and was a keynote speaker at the UNESCO World Conference on Special Education held in Salamanca, Spain in 1994. He co-edited the book *Changing Canadian Schools: Perspectives on Disability and Inclusion*, as well as many articles and chapters in books. He has acted as a consultant to the Inter-American Development Bank and was the author of a paper published in 2001 for the Bank, "Inclusive Education and Disability."

Dr. Porter was appointed to the Human Rights Commission in 2001.

Overview of the Human Rights Act

Nature and Scope

The *Human Rights Act* of New Brunswick, which is often cited as the *Human Rights Code*, is a provincial law that prohibits discrimination and harassment based on twelve personal characteristics in certain activities that fall under provincial jurisdiction. It is the principal legal instrument through which equality rights are enforced in New Brunswick.

The *Act* applies to public services, accommodations and facilities; the leasing of premises; the sale of property; labour unions and professional, business or trade associations; notices and signs; and all aspects of employment.

However, the *Human Rights Act* does not apply to federally regulated activities, such as broadcasting, telecommunications, banking, railways, ships, airlines, extra-provincial transportation, First Nations Band Councils and the federal government. Federally regulated activities are subject to the *Canadian Human Rights Act*, which is enforced by the Canadian Human Rights Commission.

The New Brunswick *Human Rights Act* prohibits discrimination by private sector businesses and organisations as well as by the provincial and municipal governments. Employers are responsible for the acts of their employees if such acts were committed in the course of employment, that is, if they were in some way related or associated with employment.

The courts have stated that it is not possible to avoid human rights laws through contracts or collective agreements, and that human rights laws prevail over any other law that conflicts with them unless it expressly says otherwise. However, human rights laws are subject to the Constitution, including the *Canadian Charter of Rights and Freedoms*.

Protection Against Discrimination and Harassment

Not all discrimination or harassment is illegal. The *Human Rights Act* of New Brunswick currently protects against discrimination and harassment based on twelve grounds: age, marital status, religion, physical disability, mental disability, race, colour, ancestry, place of origin, national origin, sexual orientation and sex, including pregnancy. The *Act* also expressly prohibits sexual harassment in employment, housing and public services.

Discrimination can be defined in everyday terms as a practice or standard which is not reasonably necessary and which has the effect, whether intentional or not, of putting certain persons or groups at a disadvantage because of their personal characteristics, such as race, sex or religion.

Canadian courts have recognised that discrimination may be direct, involving an intentional difference in treatment, usually motivated by bigotry, prejudice or stereotypes. However, it may also be unintentional, as in the case of "systemic" or "adverse effects" discrimination that occurs when a uniform practice has a disproportionately adverse effect on a disadvantaged group and the needs of the group are not reasonably accommodated.

Employers, service providers and others who are required not to discriminate must go beyond treating everyone the same without regard to race, sex and the other personal characteristics protected in human rights laws. They must, in addition, accommodate as much as reasonably possible the protected characteristics of those to whom such uniform treatment would have a discriminatory effect. This means that they must avoid standards that have a discriminatory effect where this can be done without sacrificing their own legitimate objectives or incurring undue hardship, whether that hardship takes the form of impossibility, serious risk or excessive cost.

Exceptions and Limits

The *Human Rights Act* includes a number of exceptions. For example, mandatory retirement is allowed by paragraph 3(6)(a) when it is provided for by a pension plan. Also, preferences or restrictions that would otherwise be illegal may be allowed by section 13 if they are made pursuant to an affirmative action programme aimed at remedying a traditional situation of disadvantage.

The *Human Rights Act* also has several exceptions concerning "bona fide qualifications" and "bona fide occupational qualifications." Recent Supreme Court of Canada decisions have established a three-part test to determine whether these exceptions apply. According to this test, a discriminatory standard adopted by an employer, landlord, owner or service provider is justified only when:

- (1) the standard was adopted for a purpose or goal that is rationally connected to the function being performed,
- (2) it was adopted in good faith and in the belief that it is necessary to fulfill that purpose or goal, and
- (3) it is in fact reasonably necessary to accomplish that purpose or goal, in the sense that the employer, landlord, owner or service provider cannot accommodate affected individuals without incurring undue hardship.

Like all laws, the *Human Rights Act* is subject to the *Canadian Charter of Rights and Freedoms*, which has been part of Canada's Constitution since 1982. Like the *Act*, the *Charter* protects equality rights. However, the *Charter* also guarantees certain fundamental freedoms, democratic rights, mobility rights, legal rights, aboriginal rights and linguistic rights. Furthermore, the *Charter* is enforced by the courts, not by any government agency. And, unlike the *Human Rights Act*, the *Charter* only applies to governments and their agents; private sector businesses and organisations are not subject to the *Charter*.

The Commission interprets and applies the *Human Rights Act* in a manner consistent with the *Charter of Rights*.

Enforcement Process

The *Human Rights Act* is administered by the New Brunswick Human Rights Commission, which reports to the Minister of Training and Employment Development. The Commission investigates and conciliates formal complaints of discrimination filed under the *Act* and advances quality of opportunity through public education programmes, community development activities and the monitoring of affirmative action plans.

A person claiming to be aggrieved by discrimination contrary to the *Human Rights Act* may file a complaint on a special form available from the Commission. There is no cost associated with the complaint process, and it is illegal to retaliate against a person for filing a complaint. However, the incident in question must have occurred within the previous year, unless the Commission grants a time extension. The Commission's staff helps the complainant to complete the complaint form.

An employee of the Commission investigates the complaint and submits a report on the evidence to both parties. They are given two weeks to respond in writing, should they consider that the report is incorrect or incomplete. The investigator's report and the responses of the parties are considered by the Commission at its next meeting. If the evidence does not support the complaint, the Commission dismisses it. If the evidence supports the complaint, the Commission directs the officer to attempt to negotiate a settlement satisfactory to both parties.

If a settlement cannot be negotiated, the Commission may recommend that a tribunal examine the complaint. In that case, the Minister of Training and Employment Development may refer the matter to the Labour and Employment Board, which is a permanent tribunal that deals with a variety of employment disputes, or to a human rights Board of Inquiry appointed to hear that specific case.

The Board hears the evidence and argument of both sides at a public hearing. If it finds that the *Act* was not violated, it dismisses the complaint. If it concludes that there was a violation, it may order, for example, that the discrimination stop, that a dismissed employee be rehired with back pay, that an apartment be offered to a person who had been denied an apartment or that the victim be compensated financially for expenses and emotional suffering. It is the Board of Inquiry, not the Commis-

sion, that holds a hearing and issues an order. Such boards are separate and independent from the Commission.

In order to more quickly reach a resolution, the Commission encourages early mediation and conciliation of complaints, in some cases, even at the "informal" stage, before a complaint form is drafted.

No regulations have been issued pursuant to the *Human Rights Act*. However, the Commission has adopted certain guidelines (see appendices for list of publications).

Remarks from the Chairman

Dr. Patrick Malcolmson

As a result of the September 11 tragedy and its aftermath, the past year may well prove to be a watershed for human rights. Terrorism brings with it the need to balance security and the fundamental human right to life over and against the rights of privacy and equal treatment under the law. Confronting these challenges is putting human rights commissions to the test the world over.

Human rights is an area of public policy that requires vigilance and educational innovation in order to ensure that every generation has the opportunity to live in a society that respects our most fundamental principles. The New Brunswick Human Rights Commission continues to work hard to ensure that these principles are an essential part of the fabric of our civic life in New Brunswick. To accomplish this goal, the Commission has planned and laid the groundwork for a process of analysis, introspection and institutional renewal. This process will include the development of a new strategic plan for the coming years.

Over the last year, the Human Rights Commission continued its work to educate New Brunswickers about their human rights and corresponding responsibilities under the law. Major changes in Canadian law regarding the duty to accommodate have proven to be a substantial challenge in human rights education. Ensuring that persons with disabilities are properly accommodated, and therefore not discriminated against, has thus become one of the Commission's most pressing educational priorities.

The Commission's compliance priority remains the expeditious resolution of complaints of discrimination and harassment. With this in mind, the Commission initiated a number of projects aimed at improving its case-management. Consultations were undertaken with human rights commissions in other jurisdictions in order to determine the best practices. A pilot project in Alternative Dispute Resolution (ADR) was also developed to move cases with the greatest prospect of settlement into early mediation at the pre-investigation phase. Work also continued on the development of a new computerized human rights information system with increased functionality and improved reporting capability. In addition, a project was initiated to centralize the complaint drafting function and to offer assistance to complainants in preparing and filing complaints.

These initiatives are intended to increase access to the Commission's remedies, to reduce delays in processing complaints and to improve the quality of complaint investigations, reports and decision-making.

This has been a year of new beginnings for the New Brunswick Human Rights Commission, and the coming years will require further change and renewal so that human rights continue to be well protected in New Brunswick. I would like to thank the members and staff of the Commission for their dedicated work and for their openness toward this process of renewal.

Remarks from the Director

Janet E. Cullinan, Director

During the 2001-2002 fiscal year, approximately 3657 public contacts were made (apart from website visits). They included:

- 61 workshops
- 54 community development activities
- 198 employer contacts — providing general information and appropriate referrals
- 853 requests for general information and education materials
- 206 informal complaints
- 146 formal complaints
- 1135 referrals
- 4 special programmes processed
- 898 requests for publications
- 85 copies of our videos were distributed
- 17 news releases, articles or media interviews

Out of the 3640 requests the Commission received, 2505 fell within the scope of the *Act*.

The Commission fully or partially investigated 352 complaints under the *Act*, 206 of which led to early resolution prior to the filing of a complaint form. The Commission processed 146 formal complaints. Although fewer in number, formal complaints tend to be more complex and time-consuming.

During the fiscal year under review, there were some staffing changes. Our Legal Counsel, Charles Ferris, devoted the majority of his time to doing mediation / conciliation work, and Christian Whalen became Acting Legal Counsel. We were fortunate to receive one of the government intern positions, and, through this program, were able to retain Sarina McKinnon to serve as an assistant legal counsel. The Human Rights Officer in the Moncton office left to take a position with the federal government, and Karen Taylor continued her secondment with St. Thomas University as Director of International Programming.

Human rights issues continue to evolve and become increasingly more challenging and take more time and resources to resolve. Both the Staff and the Commission continue to seek new and better approaches in these challenging times to ensure we are providing the best possible service to our clients in a timely fashion.

As always, the volume of work that was completed by the Commission could never have been accomplished without the hard work and dedication of both the Compliance Branch and Education Branch staff, to whom I express my continuing sincere appreciation for their co-operation and support.

Compliance Branch

Objectives

The objectives of the Compliance Branch are to ensure that all New Brunswickers are equal in dignity and human rights as set out in the New Brunswick *Human Rights Act*, through the following means:

- investigation and conciliation as provided for under Subsection 18(1) of the New Brunswick *Human Rights Act*;
- where necessary, the full enforcement procedures of a Board of Inquiry as provided for under Section 20 of the *Act*; and
- legal advice and services provided to Commission members and staff.

Complaint Process

Any individual who believes they have been discriminated against on the basis of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex, has the right to file a complaint of discrimination under Section 17 of the New Brunswick *Human Rights Act*. All complaints filed with the Commission are considered confidential and are discussed only with the parties involved.

It should be noted that the Commission is sensitive to the fact that every complaint brought before it involves two parties, the Complainant and the Respondent. The Commission is committed to providing fair and impartial investigations to ensure equal treatment of all parties involved in a complaint.

During the year under review, the Commission made a change in the way the formal complaint forms were completed. Rather than having the individual complainants complete the forms, we initiated a project whereby we had an Intake Officer / Complaints Officer draft the forms based on information provided to them by the complainants. In the past, the human rights officers would assist the complainant to complete the form. This new approach relieves the officers of this task and gives them more time to devote to the actual investigation and conciliation of the complaint.

Please see Appendix "B" for a flow chart of the complaint process.

Delegation of Compliance Functions

In March of 1997, the Human Rights Commission adopted a set of guidelines entitled "Guideline on Delegation of Compliance Functions under the *Human Rights Act*" as provided for under subsection 19.2(1) of the *Human Rights Act*, which states:

The Commission may, in writing, delegate to an employee of the Commission the duties and powers of the Commission under subsections 18(1) and (2).

This guideline was modified and adopted again by the Commission on November 29th, 2001, as part of an on-going process to strengthen the case management system.

The focus of this guideline is to provide authority to the Commission's Director, in conjunction with the Human Rights Officer and the Commission's Legal Counsel, to close complaint files if the complaint meets the criteria described in the guideline. Any such decision is subject to the right of a dissatisfied Complainant or Respondent to make a written request for a review by the Commission.

As described in the guideline, the decision to close a file may be made when:

- (a) the complaint is settled to the satisfaction, expressed in writing, of both the Complainant and the Respondent;
- (b) the complaint is withdrawn, in writing, by the Complainant;
- (c) the complaint is based on acts which occurred outside the normal one year limitation period for filing a complaint, unless an extension of the time limit may be made pursuant to s. 17.1(2) of the *Human Rights Act*;
- (d) the whereabouts of the Complainant or Respondent cannot be ascertained, notwithstanding the documented efforts by the Commission's staff (i.e. registered mail) to locate the party over a 3 month (90 day) period;
- (e) the Complainant is not an aggrieved person under the *Human Rights Act*;
- (f) the complaint is clearly not within the Commission's jurisdiction;
- (g) the Complaint is clearly without merit;
- (h) the subject matter of the complaint has been the subject of a settlement where a release has been freely and willingly signed by the Complainant;
- (i) the Complainant confirms that on the basis of the same facts, s/he will pursue the same remedy by a process other than that provided for in the *Human Rights Act*;
- (j) the complaint is clearly frivolous, vexatious or made in bad faith; and
- (k) in any other circumstance, the Commission so directs.

In the majority of instances, this guideline is used to close files that have been settled, either prior to the Commission making a determination, or if the Commission has made a determination to move the file on for settlement and a settlement is reached. With this process, parties are not waiting for a Commission meeting to have a file closed. It should be noted, however, that the Commission is advised of every case that has been closed under this guideline at the next regular meeting of the Commission.

The full text of the guideline is available at: <http://www.gnb.ca/hrc-cdp/e/gdelegae.htm>

Informal Complaints

Over the last few years, the Commission has tended to use what we call "informal complaints" as an early complaint resolution process and has found it to be a very efficient practice. It has been used by the staff as an attempt to settle complaints prior to a formal complaint being filed. In the fiscal year under review, the staff processed 206 informal complaints, in addition to their formal complaint caseload.

The majority of these informal complaints deal with employment issues, as do the majority of all contacts with the Commission. The following is a sample of some of the types of cases that were processed through the informal approach.

1. Physical Disability / Employment

The Complainant alleged that he started his employment with the Respondent employer in 1984 and that, in January 2001, he went on sick leave for back injuries. In August 2001, the Complainant had used up all his short-term disability insurance and was denied long-term disability because he was able to work performing light duties. The Respondent refused to accommodate the Complainant's disability by stating that there were no light duties and that, until the Complainant could return to his old job without restrictions, they could do nothing for him.

The officer contacted the Personnel Supervisor and discussed the concept of "duty to accommodate" with him. It was agreed that they would have a meeting between the Complainant, the Manager and the Personnel Supervisor to attempt to resolve the issue. Following a period of time after the meeting, the officer contacted the Complainant for an update on the situation. The Complainant advised the officer that he had started to work on an ease-back program with light duties, and was now working a 40-hour week with light duties. The Complainant requested that his file be closed and no further action be undertaken by the Human Rights Commission in his case. Case closed.

2. Mental Disability / Employment

The Complainant contacted the Commission alleging she had been discriminated against by her employer. She alleged she had been dismissed from her position in a cleaning company on the basis of mental disability (i.e. slow learner). The Respondent employer denied these allegations and attributed the dismissal to some minor performance issues, but mainly to the loss of a

contract and seniority. However, a successful mediation session was held, and a positive conclusion was reached. The Complainant agreed to withdraw her complaint and the Respondent agreed that, when a position opened up, they would contact the Complainant to see whether or not she was interested in it.

3. Sex / Services

A Complainant contacted the Commission indicating she believed she had been discriminated against by a local nightclub on the basis of her sex. She was a student from a computer college. There had been a graduation and they were partying at a local club. The Complainant had had her head shaved for a fundraiser for cancer research and always wore a bandana. When she arrived at the club, she was requested to remove her bandana in order to comply with the rules of the club on headwear. The Complainant complied with the request even though she indicated she had advised the doorman that she felt it would create problems.

Later during the evening, the Complainant and a friend went to the washroom. The Complainant indicated there were approximately 20 - 25 women in the washroom. Someone allegedly asked what is he doing in here, having mistaken her for a man. Another staff member came over and asked, "What are you doing in here?" without recognizing the fact that the Complainant was female. The Complainant stated that things were said very loudly and caused her embarrassment and discomfort. She left the room crying. The Human Rights Officer discussed the situation with her, and the Complainant came to the conclusion that she did not wish to pursue the situation any further. Case closed.

Formal Complaints

A formal complaint is a complaint made in writing to the Commission on a complaint form, according to Section 17 of the *Human Rights Act*.

Please see Appendix C for a statistical table and charts showing more detailed information about the formal complaints processed in 2001-2002. Here are some highlights:

- The Commission processed 146 formal complaints this year, while 115 complaints had been processed the previous year.
- Overall, the most common variables were physical disability (53), mental disability (27) and sex / sexual harassment (26).
- As in previous years, most complaints were employment-related (122).
- Of the 122 employment cases, 69 (57%) dealt with discrimination based on physical or mental disability, up from 33 last year. It was the largest group of complaints.
- The next largest areas of concern in relation to employment were sex discrimination, with 11 complaints, and sexual harassment, with 15 complaints. Thus, 26 cases dealt with some form of sex discrimination in employment, down from 33 last year. The remainder of the employment discrimination cases were spread throughout the other variables.
- The Commission's Campbellton office processed 52 formal complaints, while the Fredericton, Saint John and Moncton offices processed 38, 30 and 26 complaints respectively.
- About 122 formal complaint files were open at the end of the fiscal year, including cases referred to Boards of Inquiry.
- 45 complaints were settled in 2001-02.

The following is a sample of the types of formal complaints that the Commission dealt with during the period under review.

1. Physical Disability / Employment

The Complainant alleged that the Respondent employer discriminated against her because of her physical disability —allergy to scented products—and did not accommodate her disability. During the year prior to her filing a complaint with the Human Rights Commission, the Complainant alleged that she had had a serious reaction to a strong cologne worn by a co-worker. The

reaction resulted in her taking sick leave. Several days later, the same thing happened again, and the Complainant allegedly asked the co-worker to keep his distance from her work area. The co-worker allegedly refused. As a result, the Complainant was required to take additional sick leave to recover from the reaction.

The Complainant indicated there were several other incidents in the following weeks and that the co-worker continued to wear the cologne even after he was requested by the Complainant to refrain from doing so. As a result, the Complainant indicated she had to take an extended sick leave. When she returned to work under her physician's instructions, she initially worked on an every other day basis. The Complainant indicated her employer did post "No Scents" posters in the work area.

The Complainant indicated that the co-worker's supervisors had asked him to refrain from wearing the cologne, but he allegedly continued to do so. The Complainant indicated that her supervisor allegedly passed on all information to her co-worker's supervisors, but the Respondent employer took no further action to rectify the problem or to protect her health.

The Respondent employer and co-worker denied they discriminated against the Complainant on the basis of her physical disability. The Respondent co-worker denied wearing the cologne and stated that he had switched from scented shampoos, soaps, detergents and deodorants to unscented products when he learned of her allergies.

The Respondent employer indicated that they took the Complainant's physical disability concerns seriously, and acted quickly to resolve her problems. The employer also indicated that they attempted to accommodate the Complainant in a variety of ways.

Following a lengthy investigation, the Commission determined that it was not prepared to dismiss this complaint and instructed the Officer to endeavour to effect a settlement. Over time, a settlement was reached that was agreeable to all parties. Case closed.

2. Physical Disability / Employment

The Complainant alleged that he had been discriminated against by the Respondent employer because of his physical disability —back problems— when the employer terminated his employment. The Complainant had been employed with the Respondent company in various positions over a 21-year period prior to his dismissal. The Complainant indicated he had recovered from his chronic back problems at the date of his termination and was available to work on that date. The Complainant alleges that the Respondent failed to accommodate his disability.

The Respondent employer denied that they had discriminated against the Complainant because of his physical disability. The Respondent stated that the reason the Complainant was dismissed was because he did not provide his employer with any medical evidence which established that he was fit to return to his former position, or any other position within their company for which he was qualified. The Respondent employer alleged that no additional medical evidence was ever provided to it. As a result, the Respondent employer terminated its employment relationship with the Complainant.

Based on the information obtained by the officer during the course of the investigation, the Commission determined that it was not prepared to dismiss this case and instructed the officer to attempt settlement. Initially, a settlement in this case could not be reached, and this complaint was in the process of being moved on to the Board of Inquiry stage. However, a settlement was finally reached, to the satisfaction of all parties concerned. Case closed.

3. Sex (pregnancy) / Employment

The Complainant alleged that she had been discriminated against by the Respondent employer on the basis of sex (pregnancy) when her employment with the Respondent was terminated after being in their employ for 10 ½ months. The Complainant alleged that she had been dismissed from her job because she was pregnant. She stated that her job performance and work was never questioned until after she informed her supervisor that she was pregnant.

The Respondent denied that they had discriminated against the Complainant because of sex. The Respondent stated that the Complainant was dismissed for cause. They maintained that her poor attendance at work was an issue long before they realized that she was pregnant. The Respondent went on to say that they currently had five employees who had returned to work after their maternity leaves.

Based on the information obtained by the officer during the course of the investigation, the Commission determined that it was not prepared to dismiss this case and instructed the officer to attempt conciliation. This case was eventually settled to the satisfaction of all parties concerned.

Referrals

The Commission received 1135 inquiries during the year under review that do not fall within the jurisdiction of the *Human Rights Act*. However, as the callers often do not know which is the most appropriate agency to provide them the information or assistance they require, the Commission staff will act as a referral agent by referring the caller to the appropriate agency. The following is an example of the types of calls that the Commission receives that are forwarded on to the most appropriate agency:

1. A woman contacted the Commission offices indicating she believed she had been unfairly rejected for an administrative position with her employer. After obtaining more detailed information from her, it was found the reasons she provided did not include any grounds under the *Human Rights Act*. Therefore, she was referred to her union.
2. A woman contacted the Commission offices alleging physical, mental and sexual abuse of young people working in a local fast food chain restaurant. One of the alleged victims was her daughter and the others were related to her. The young employees had been exposed to physical threats, grabbed by the front of the shirt and verbally threatened. After obtaining additional information from the caller, and finding there did not appear to be anything under the *Human Rights Act*, the officer advised her to contact the local police, Employment Standards, Workplace Health & Safety and Family & Community Services.
3. A woman called who had received a notification of lay-off. She was seeking information regarding notice of lay-off. She was referred to the Employment Standards Branch, Department of Training & Employment Development.
4. A caller contacted the Commission's offices and spoke with an officer. She indicated she had rented an apartment and was having problems with NB Power getting her power connected. She indicated the previous tenant had not paid their bill and the power had been cut off. After obtaining more details from her, and determining that there was nothing under the *Human Rights Act*, the officer advised her to contact management in NB Power and, if she was not satisfied with the actions that were taken, to then file a complaint with the office of the Ombudsman.

Boards of Inquiry

If a formal complaint cannot be settled, the Commission may recommend that a tribunal examine the complaint. In that case, the Minister of Training and Employment Development may refer the matter to the Labour and Employment Board, which is a permanent tribunal that deals with a variety of employment disputes, or to a human rights Board of Inquiry appointed to hear that specific case. Such boards should not be confused with the Commission; they are separate and independent from the Commission.

The Board hears the evidence and argument of both sides at a public hearing. If it finds that the *Human Rights Act* was not violated, it dismisses the complaint. If it concludes that there was a violation, it may order, for example, that the discrimination stop, that a dismissed employee be rehired with back pay, that an apartment be offered to a person who had been denied an apartment or that the victim be compensated financially for expenses and emotional suffering.

Six Boards of Inquiry were pending at the beginning of the 2001-2002 fiscal year, but no new complaints were referred to a Board of Inquiry during the year. Three of the cases were satisfactorily concluded without a hearing after being referred to the Labour and Employment Board acting as a Board of Inquiry. Hearings were scheduled regarding two of the other Boards, and a decision was rendered with respect to one of these during the fiscal year. Thus, two Boards of Inquiry were left pending on March 31, 2002.

In a decision released on November 29, 2001, the Board of Inquiry in the matter of *David Lloyd Green v. Department of Education as successor to the Saint John School of Nursing*, Eugene McGinley, Q.C., chairperson, dismissed the complaint of sex discrimination in the provision of services brought by the complainant. The decision also confirmed the Commission's position

that its counsel may retain carriage in a matter where the complainant is represented by his own legal counsel (as he was in this case), and the Commission may determine the extent of its involvement in the proceedings. The Board noted, however, that in such circumstances the Board would be vigilant to avoid the appearance of unfair procedural advantage to any party.

Education and Development Branch

Objectives

The educational focus of the Human Rights Commission is to develop quality programmes and products that promote equality and compliance with the *Human Rights Act*. These objectives are met using a variety of proactive promotional and educational approaches. Some of the activities that the Education and Development Branch undertook are mentioned below.

National and International Initiatives

- The Commission is a member of Public Education Partners, which is made up of representatives of the educational staff of human rights commissions from across Canada. In 2001-2002, the network conducted a human rights education gap analysis survey. Representatives reported on all educational research and publications conducted by each human rights commission in the last five years. This survey will be used to identify gaps in human rights educational programmes in Canada and will provide a means of evaluating their effectiveness.
- The Commission's Director attended the 2001 annual meeting of the Canadian Association of Statutory Human Rights Agencies (CASHRA), as well as its business meeting, in Whitehorse, Yukon. CASHRA is the national organisation that represents all of Canada's human rights commissions.
- Members of the Commission's staff compiled materials for the Department of Training and Employment Development's response to the Office of the High Commissioner for Human Rights' Questionnaire on Human Rights Education in the Formal Educational System. The response to the questionnaire and the accompanying materials were forwarded to the Council of Ministers of Education, Canada.

Workplace Initiatives

The Education and Development Branch continues to focus on the promotion of respectful workplaces. Here are a few of the initiatives taken in the 2001-2002 year:

- The Commission's staff responded to 198 inquiries from employers seeking information and assistance with policy development and the application of the *Human Rights Act*. These inquiries most often concerned sexual and personal harassment issues and policies, the employer's duty to accommodate, employment equity programmes, pre-employment medical exams, employee dress and grooming codes, job application forms and drug testing.
- Several employers requested training on human rights in the workplace, in particular workplace harassment. Members of the staff delivered several presentations and assisted employers with the development of anti-harassment policies.

Educational Initiatives

- As the Atlantic Provinces Education Foundation has established a new framework for essential graduation learnings for schools in the Atlantic provinces, the Human Rights Commission has been in contact with Department of Education and school officials in order to advocate an increased emphasis on human rights in the implementation of the framework.
- In August 2001, the Human Rights Commission's Chair and a staff member gave lectures at the Teaching for and About Human Rights Institute held at St Thomas University in Fredericton. This is a summer institute designed to acquaint teachers with human rights and to teach them how to infuse them into schools.
- The Commission is active on the resource committee of the *Projet d'éducation à la citoyenneté dans une perspective planétaire* (PÉCPPA), a project of the G.R.E.P.M. (Groupe de recherche en éducation pour une perspective mondiale), which is

based at the Université de Moncton. In conjunction with Heritage Canada, PÉCOPPA offered a summer institute at the Université de Moncton in August 2001. This week-long credited course, entitled "La construction d'une culture de paix dans nos écoles...de soi vers l'autre," focused on human rights education, solidarity and international development, intercultural education and education on the environment. Government and non-governmental organizations and teachers were invited to attend. The Commission set up a kiosk displaying its publications, and a member of the staff attended the course.

- At the New Brunswick Teachers Association's Elementary Council spring workshops in Fredericton, a staff member delivered a presentation entitled Human Rights and the Total School Environment to elementary and middle school teachers.
- Staff members provided information sessions to approximately 120 participants in the Youth Apprenticeship Program, at four full-day training sessions held in Fredericton and Moncton. Offering high school students with a career interest, work experience and specific occupational skills training, the Department of Education's Youth Apprenticeship Program represents an innovative approach to career preparation in a rapidly changing and increasingly technological global economy. Over a period of two paid summer work terms, students develop employability and specific occupational skills, setting the stage for further post-secondary education and/or work.
- A Commission staff member met with the principal and teachers at a middle high school in response to the school's concern that, shortly after September 11, there had been an increase in the amount of graffiti and name-calling by the students, both in the schoolyard and in class. The students were using racist and homophobic terminology and drawing swastikas on books and desks. The problem was persisting even though a large number of students had already received a suspension as per the Department of Education's Positive Learning Environment policy. All agreed that the best way to address this issue was through education. Discussions were held relating to available activities, guest speakers, films, and curriculum outlines from other jurisdictions. The Commission offered assistance and provided audio-visual and print resources, including Internet addresses, educational resources and reports from the Department of Education and from other jurisdictions.
- Twenty-eight workshops on various human rights topics were presented to school, college and university students. Additional presentations were made to youth training or apprenticeship programmes.

Human Rights Award

Each year, the Commission presents the New Brunswick Human Rights Award as a means of celebrating Human Rights Day, December 10. This award was established by the Commission in 1988 to recognise outstanding effort, achievement or leadership in enhancing human rights in New Brunswick. About 600 kits were mailed out seeking nominations for the 2001 award.

The recipient of the 2001 Human Rights Award was Mrs. Alida Léveillé-Brown, of Campbellton. A teacher by profession, she was pivotal in ensuring that education was available to all members of the Anglophone, Francophone and Native communities through extension courses that allowed them to remain in the region while continuing their education. She pressed for pay equity and maternity leave for women as well as for the establishment of day-care centres and transition houses in the region. While a school principal, she championed the rights of students with disabilities to a quality education and to actively participate in the community.

Among her many honours, she was named a Paul Harris Fellow by the Campbellton Rotary Club for her outstanding commitment to humanitarian causes and volunteer activities. She also received a Medal of Honour for her tireless work in continuing education and the Centennial Award from the City of Campbellton for outstanding contribution to improving the lives of local people and the community.

The Human Rights Award was presented to Mrs. Léveillé-Brown by the Honourable Marilyn Trenholme Counsell, Lieutenant-Governor, at a ceremony in Campbellton on December 8, 2001. A musical presentation was provided by the Ars Musica vocal ensemble. About 125 people attended the ceremony, which was followed by a reception.

Publications

- One copy of *Learning Together about Rights and Responsibilities*, a 157-page teacher's activity guide for grades 4 to 8, was distributed to every middle school in the province. The guide consists of 27 activities designed to help students learn about

human rights, cultural diversity, stereotypes, prejudice and discrimination. It includes various handouts and the full text of a few of the major human rights documents. The Commission and the Francophone Sector of the Department of Education were negotiating a joint delivery of the French version, *Apprenons ensemble, nos droits et nos devoirs*, to all Social Studies teachers of grades 4 to 8 in the francophone school districts for the 2002-2003 school year.

- Work continued on Unit 1 of the Human Rights Tool Kit Series, entitled *A Guide to Understanding Human Rights: Getting Back to Basics*. The unit has been tested and reviewed by several teachers.
- Another unit entitled *Human Rights at Work in New Brunswick: A Guide to the N.B. Human Rights Act and the Relevant Case Law*, neared publication. It is aimed at human resource practitioners.

Website

An extensive Links page was added to the website. It provides links to several groups and resources in New Brunswick, to other human rights commissions in Canada, to equality-seeking federal agencies and to major human rights websites worldwide.

The Commission's annual reports for 1999-2000 and for 2000-01 were posted on our website in PDF and MS Word formats.

The website provides information about sexual harassment, stopping racism, pre-employment interviews, as well as information about the *Universal Declaration of Human Rights* and John Humphrey, the New Brunswicker who was its main drafter. In addition, it includes contact information, a list of publications, our mission statement, biographies of Commission members, the full text and an overview of the *Human Rights Act*, a FAQ and a search form.

Workshops and seminars

Sixty-one workshops were presented to groups throughout the province in the public, private and not-for-profit sectors, such as schools, colleges, universities, youth training classes, employers and business associations.

The presentations covered such areas as: sexual harassment; human rights in New Brunswick; the respectful workplace; racism; respecting differences in light of September 11th; human rights in the workplace; special programmes; human rights and employment; respectful learning environment; and respecting one another

In 2001-02, the Commission started delivering a significant number of its workshops using Powerpoint presentation software.

The educational staff worked on developing several standardised or pre-packaged workshops on a variety of issues.

Community Development

Following a cross-burning incident in Moncton, a staff member contacted a City of Moncton Councillor to offer educational assistance to address hate and discrimination on the basis of race. Information on the *Human Rights Act* and the Commission's educational materials concerning incidents of hate was provided.

Special Programmes

Section 13 of the *Human Rights Act* provides that "on the application of any person, or on its own initiative, the Commission may approve a programme to be undertaken by any person designed to promote the welfare of any class of persons."

The following individual programmes were approved, renewed or reviewed by the Human Rights Commission in 2001-2002:

1. Université de Moncton

Employment / Sex, ancestry, national origin, place of origin, race, colour, physical or mental disability

Renewed for three years on June 22, 2001

Amended on September 27, 2001

Preference for disabled persons, visible minorities, women (and men, where under represented) and Aboriginal people, where no other clearly superior candidate.

2. New Brunswick Department of Training and Employment Development

Services / Ancestry, race, colour, physical disability, mental disability

Approved for one year on June 21, 2001

Reserve 14 seats in a 12-week long training program for persons with disabilities and Aboriginal persons in Moncton, entitled Skills Partnership Training

3. New Brunswick Departments of Finance and Training and Employment Development

Employment / Sex

Amended on November 29, 2001

Reviewed on January 29, 2002

Fifty-one positions reserved for female students in Summer Mentorship Program

4. New Brunswick Department of Training and Employment Development

Services / Physical disability, mental disability

Approved for three years on March 21, 2002

Reserve 14 seats in a 12-week long training program for persons with disabilities in Moncton, entitled Skills Partnership Training

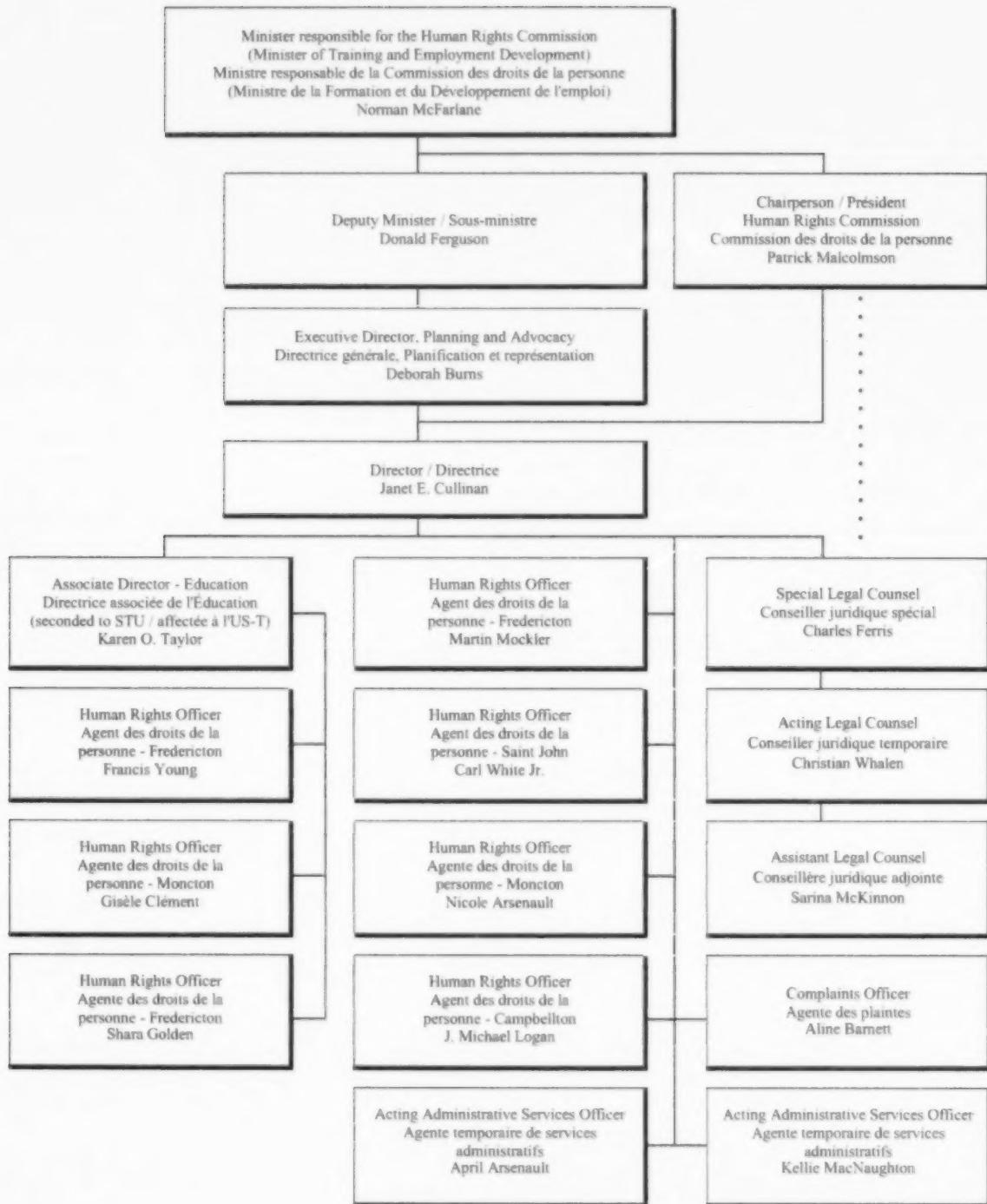
Other accomplishments:

- As part of its education programme, the Commission provides referrals to appropriate agencies where it does not have jurisdiction. This service was provided to 1135 persons.
- 853 persons were provided with general information or educational materials.
- 898 persons were provided with publications.
- 85 copies of the Commission's audiovisual materials were provided.
- 54 community development activities were undertaken.
- 17 news releases, articles or media interviews

Appendix A

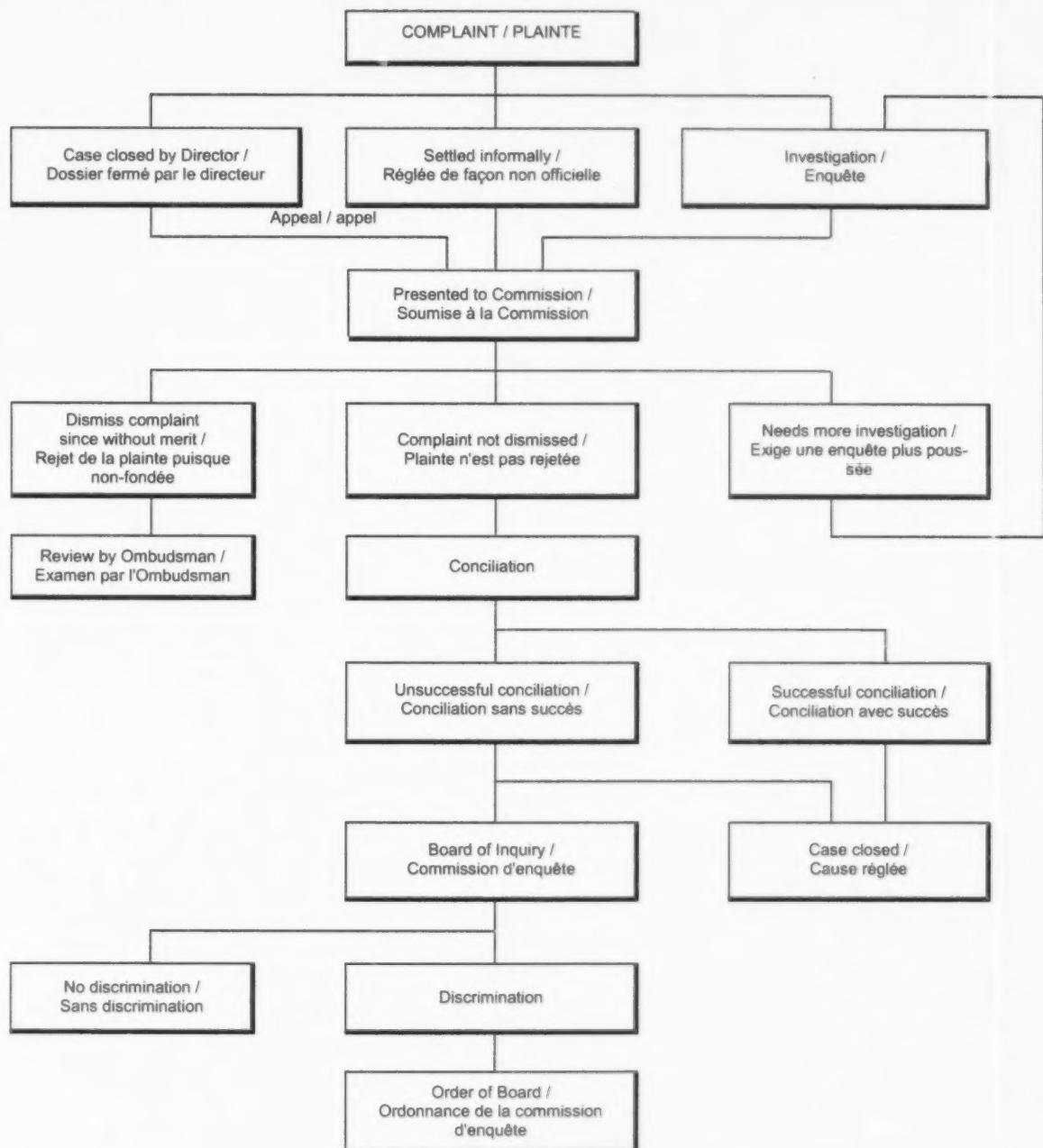
Organisational Chart

March 31, 2002



Appendix B

Complaint Process



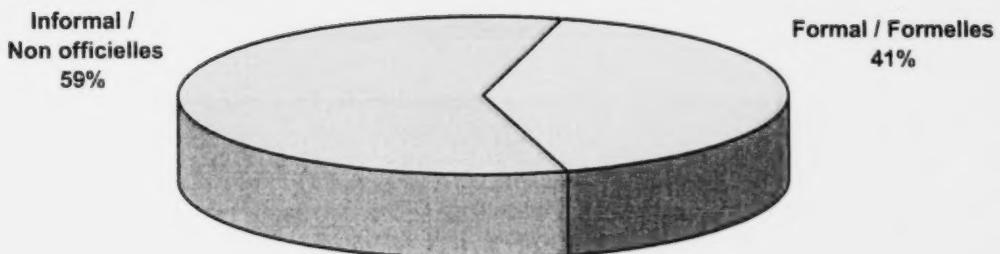
Appendix C

Formal Human Rights Complaint Statistics

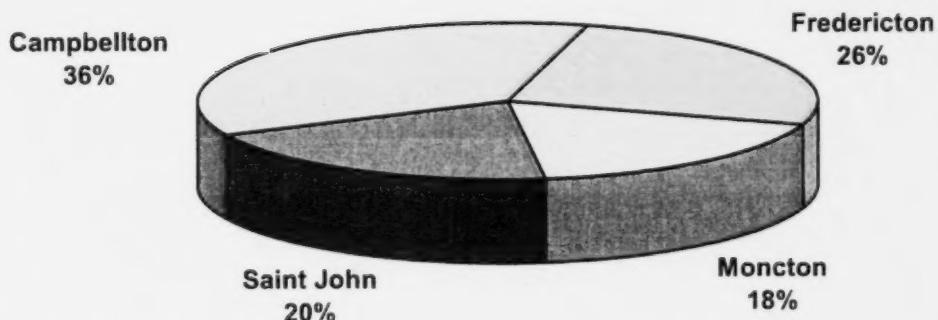
April 1, 2001 to March 31, 2002

	Employment Emploi	Housing Habitation	Services Services	Publicity Publicité	Associations Adhésion	Total Total
Race / Race	3	0	0	0	0	3 (2%)
Sex / Sexe	11	0	0	0	0	11 (8%)
Religion / Croyance	0	0	1	0	0	1 (1%)
Place of Origin / Lieu d'origine	0	0	0	0	0	0 (0%)
Marital Status / État matrimonial	2	0	3	0	0	5 (3%)
Mental Disability / Incapacité mentale	22	1	4	0	0	27 (18%)
Colour / Couleur	0	0	0	0	0	0 (0%)
Age / Âge	8	1	2	0	0	11 (8%)
Ancestry / Ascendance	2	0	2	0	0	4 (3%)
National Origin / Origine nationale	0	0	1	0	0	1 (1%)
Physical Disability / Incapacité physique	47	3	3	0	0	53 (36%)
Sexual Harassment / Harcèlement sexuel	15	0	0	0	0	15 (10%)
Sexual Orientation / Orientation sexuelle	1	0	2	0	0	3 (2%)
Reprisal / Représailles	2	0	0	0	0	2 (1%)
More than one ground / Plus d'un motifs	9	0	1	0	0	10 (7%)
Total	122	5	19	0	0	146
	(84%)	(3%)	(13%)	(0%)	(0%)	(100%)

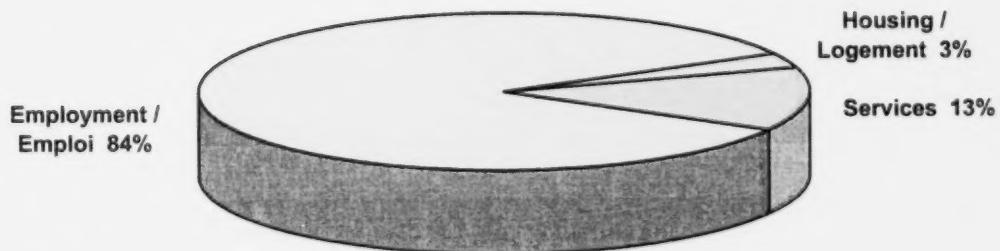
**Types of Complaints
2001-2002**



**Formal complaints by location
2001-2002**



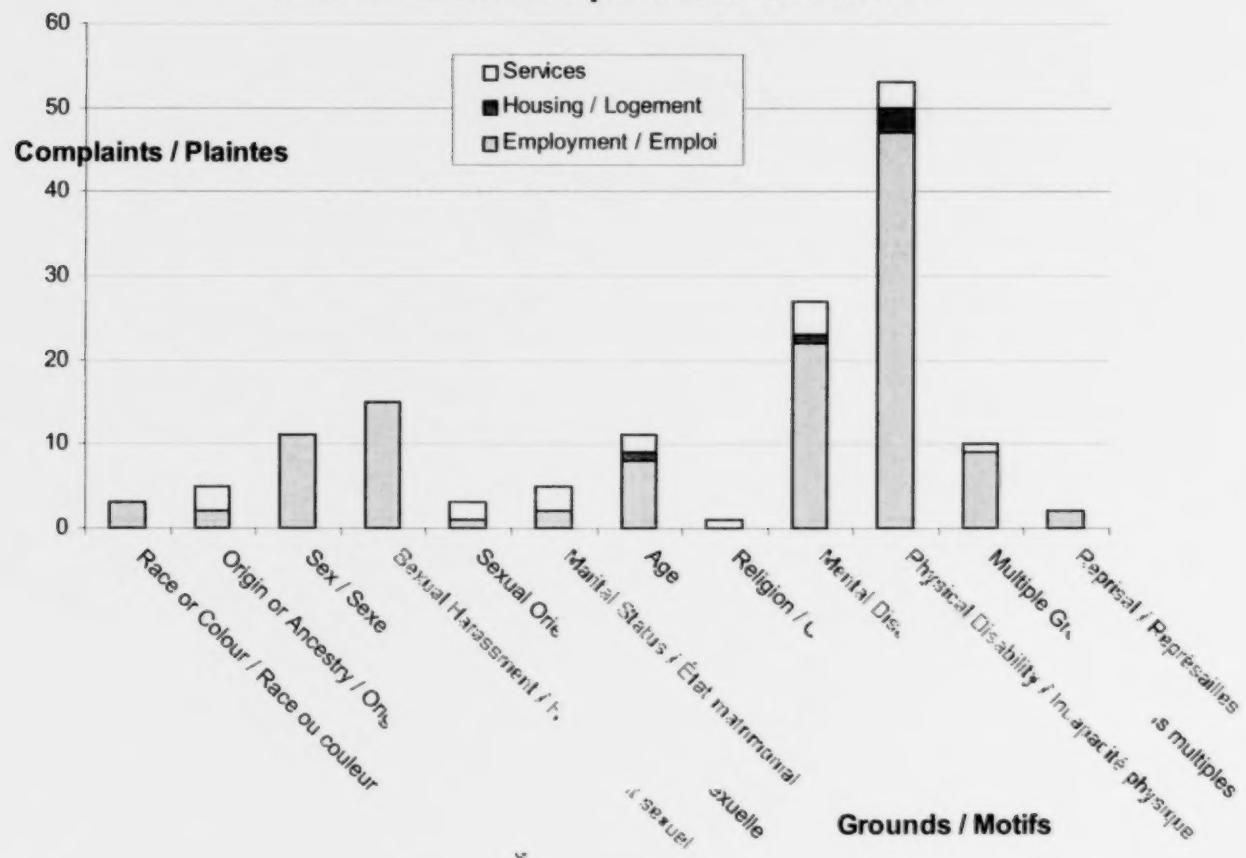
**Formal complaints by activity
2001-2002**



Formal complaints by ground and activity

2001-2002

Plaintes officielles par motif et activité



Appendix D

Publications of the New Brunswick Human Rights Commission

Note: *The following publications are available free of charge, but quantities are limited. To find out where you can order our publications, see Appendix E. Please note that a few publications not listed below are available only on our website at: www.gnb.ca/hrc-cdp/e/*

Pamphlets

also available on our website

- The Human Rights Award
- Our Service Guarantee

Fact sheets

also available by e-mail from hrc.cdp@gnb.ca

- 1-The New Brunswick Human Rights Act
- 2-The New Brunswick Human Rights Commission
- 3-Public Services
- 4-Employment Conditions and Practices
- 5-Employment Agencies
- 6-Job Advertisements
- 7-Pre-employment Process
- 8-Workplace Accessibility
- 9-Sexual Harassment
- 10-Housing

Videos and Major Publications

- Learning Together about Rights and Responsibilities, A teacher's activity guide for grades four to eight (157 pages)
- Equality in Action - The New Brunswick Human Rights Commission: 30 years in Review 1967-1997 (109 pages)
- Annual Report
- Rights and Responsibilities: the 4th and 5th R's of Education. A Common Sense Guide to Human Rights Education for Adults (104 pages)
- Foundations for Fairness video series and study guide
- Vision for Equality video series and study guide
- Human Rights Film and Video Guide (116 pages)
- Towards a World Family (Ferris Report) (270 pages)

Posters

- Universal Declaration of Human Rights
(full text, on 17" x 22" poster)
- Human Rights are Everyone's Business
(11" x 17" full-colour poster with URL & phone of NBHRC)

Guidelines adopted by the Commission

- Guideline on Privilege and the Human Rights Commission
Adopted December 11, 1995 (3 pages)
- Guideline on Time Limit Extension for Complaint Initiation
Adopted April 15, 1996 (1 page)
- Guideline on Delegation of Compliance Functions
Adopted March 10, 1997 (4 pages)
- General Criteria for the Investigation of Complaints of HIV/AIDS Discrimination
Adopted March 10, 1997 (3 pages)
- Guideline on B.F.O.Q.'s and B.F.Q.'s and the Duty to Accommodate
Adopted November 9, 2000 (10 pages)

Appendix E

How to contact the New Brunswick Human Rights Commission

Website: www.gnb.ca/hrc-cdp/e/

Head Office: Fredericton

Human Rights Commission
751 Brunswick Street
P.O. Box 6000
Fredericton, NB
E3B 5H1 Canada
Telephone: (506) 453-2301
Fax: (506) 453-2653
TTY: (506) 453-2911
E-mail: hrc.cdp@gnb.ca

Campbellton

Human Rights Commission
157 Water Street, 3rd Floor
City Centre, Room 310
P.O. Box 5001
Campbellton, NB
E3N 3H5 Canada
Telephone: (506) 789-2574
Fax: (506) 789-2415

Moncton

Human Rights Commission
770 Main Street
Assumption Place, 4th floor
P.O. Box 5001
Moncton, NB E1C 8R3 Canada
Telephone: (506) 856-2422
Fax: (506) 869-6608

Saint John

Human Rights Commission
8 Castle Street
P.O. Box 5001
Saint John, NB
E2L 4Y9 Canada
Telephone: (506) 658-2414
Fax: (506) 658-3075